JUTA PERMAI SDN BHD

v.

MOHD ZAIN JANTAN & ORS

COURT OF APPEAL, KUALA LUMPUR
MOKHTAR SIDIN JCA
HAIDAR MOHD NOOR JCA
ABDUL KADIR SULAIMAN JCA
[CIVIL APPEAL NO: B-02-414-99]
15 MARCH 2001

CIVIL PROCEDURE: *Summary possession of land - Triable issues, whether any - Whether defendants squatters simpliciter - Whether defendants entered into or remained in occupation of land with licence or consent of plaintiff's predecessor in title - Whether O. 89 Rules of the High Court 1980 the correct procedure*

CIVIL PROCEDURE: *Summary possession of land - Affidavit in support of originating summons - Whether plaintiff stated circumstances in which land was occupied without licence or consent and in which its claim to possession arose - Whether there was suppression of material facts by plaintiff - Whether O. 89 r. 3(b) Rules of the High Court 1980 complied with*

This was the appellant's appeal from the decision of the learned judge dismissing its summons under O. 89 Rules of the High Court 1980 ('RHC') on the grounds that: (i) whether the respondents entered into or remained in occupation of the land with the licence or consent of the appellant's predecessor in title ('the State Authority') was a triable issue; and (ii) the appellant had failed to comply with O. 89 r. 3(b) RHC in failing to aver the circumstances in which the land had been occupied without licence or consent and in which its claim to possession arose.

Held:
Per Haidar Mohd Noor JCA

[1] The learned judge was right in holding that the summary procedure under O. 89 RHC was applicable only in respect of squatters simpliciter – and the respondents not being such persons – O. 89 RHC was therefore not the correct procedure in this instance. The learned judge was also correct in his conclusion that there was suppression of material facts by the appellant within the meaning of O. 89 r. 3(b) RHC.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Ini adalah rayuan perayu daripada keputusan hakim yang bijaksana yang menolak samannya di bawah A. 89 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') atas alasan bahawa: (i) samada responden-responden memasuki atau kekal menghuni tanah tersebut dengan kebenaran atau persetujuan pendulu dalam hakmilik perayu ('Pihak Berkuasa Negeri') merupakan isu yang boleh dibicarakan; dan (ii) perayu telah gagal untuk mematuhi A. 89 k. 3(b) KMT dalam gagal untuk menegaskan keadaan-keadaan dalam mana tanah tersebut telah dihuni tanpa kebenaran atau persetujuan dan dalam mana tuntutannya untuk memiliki telah berbangkit.

Diputuskan:
Oleh Haidar Mohd Noor HMR

[1] Hakim yang bijaksana telah bertindak dengan betul dalam memutuskan bahawa ringkasan prosedur di bawah A. 89 KMT boleh dipakai hanya berkenaan dengan setinggan simpliciter – dan responden-responden bukan merupakan orang yang sedemikian – A. 89 KMT dengan itu bukan prosedur yang betul dalam keadaan ini. Hakim yang bijaksana juga betul dalam kesimpulan beliau bahawa terdapatnya penyekatan fakta-fakta material oleh perayu di dalam lingkungan maksud A. 89 k. 3(b) KMT.

[Rayuan ditolak.]

Case(s) referred to:
Bohari Taib & Ors v. Pengarah Tanah Galian Selangor [1991] 1 CLJ 647 ***(foll)***
Salim Ismail v. Lebbey Sdn Bhd (No 2) [1997] 1 CLJ 102 ***(foll)***
Shaheen Abu Bakar v. Perbadanan Kemajuan Negeri Selangor [1998] 1 CLJ 74 ***(foll)***

Legislation referred to:
National Land Code 1965, s. 425(1)
Rules of the High Court 1980, O. 89 r. 3(b)

For the appellant - Yeoh Cho Kheong; M/s Ling & Theng Book
For the respondent - Manjit Singh Saini; M/s Harun Idris Yeoh & Partners

[Appeal from High Court, Shah Alam; Civil Suit No: MT1-24-995-98]

Reported by Gan Peng Chiang

JUDGMENT

Haidar Mohd Noor JCA:

The appellant, as the plaintiff in the court below, filed an originating summons against the respondents pursuant to O. 89 of the Rules of the High Court 1980 ("RHC").

The appellant is the registered proprietor of the lands held under H.S.(D) 110365 to H.S.(D) 110464, P.T. No. 34564 to P.T. No. 34645, H.S.(D) 110465 to H.S.(D) 110564, P.T. No. 34746 to P.T. No. 34845, H.S.(D) 110565 to H.S.(D) 110664, P.T. No. 34846 to P.T. No. 34945, H.S.(D) 110665 to H.S.(D) 110764, P.T. No. 34946 to P.T. No. 35045, H.S.(D) 110765 to H.S.(D) 110864, P.T. No. 34646 to P.T. No. 34745, H.S.(D) 110865 to H.S.(D) 110898, P.T. No. 35046 to P.T. No. 35079, Mukim Sungai Buluh, Daerah Petaling, Negeri Selangor ('the said lands'). Order 89 is a summary procedure which provides for the appellant to seek an order of the court to evict the respondents from the said lands. The appellant claimed the respondents entered into or remained in occupation of the said lands without its licence or consent or that of its predecessor in title, that is, the state authority. In other words, the appellant alleged that the respondents were squatters on the said lands.

At the hearing in the court below, the respondents took a preliminary objection to the procedure under O. 89 of RHC adopted by the appellant. They took the point that they were not squatters simpliciter and whether they entered and occupied the said lands with the consent or acquiescence of the State Authority is a triable issue. The learned judge agreed with the submission of counsel for the respondents. In addition thereto, the learned judge held that the appellant failed to comply with O. 89 r. 3(b) of RHC as it failed to disclose the circumstances of the occupation of the said lands by the respondents without licence or consent and in which its claim to possession arose citing the Supreme Court case of *Bohari bin Taib & Ors v. Pengarah Tanah Galian Selangor* [1991] 1 CLJ 647 in support thereof. In the result the learned judge upheld the respondents' preliminary objection and the appellant's summary application under O. 89 was dismissed with costs.

The appellant appealed to this court. We dismissed the appeal with costs. We now proceed to give our reasons.

It is not disputed that the appellant is the registered proprietor of the said lands at the time the originating summons was filed by it. It is equally not disputed that the said lands were alienated to the appellant by the state authority of Selangor.

The main issue before the court below was whether on the facts as disclosed in the affidavits and the relevant documents exhibited thereto, the respondents could properly be termed or described as squatters simpliciter. If it is so then O. 89 was properly invoked by the appellant. However, if it is otherwise, that is, the respondents could not possibly be described as squatters simpliciter and whether they occupied the said lands with the consent or acquiescence of the state authority is a triable issue then O. 89 was not in the circumstances the right procedure. (see *Bohari bin Taib & Ors v. Pengarah Tanah Galian Selangor, supra*).

The learned judge in ruling that O. 89 was not suitable in this case as the respondents occupied the said lands with the acquiescence/consent of the state authority relied on exhs. "A3" and "A5" annexed to the respondents' affidavit in reply.

In respect of exh. "A3" this is what the learned judge said:

> The said exhibit "A3" is a letter from the Timbalan Menteri Besar of Selangor who gave undertaking that he would procure the said land and transfer it to the Defendants. This is not only proof of the acquiescence/consent of the State Authority the original owner of the land, to occupy the same, but is also proof of an undertaking by a person no less than the Timbalan Menteri Besar of Selangor to procure the said lands for the Defendants and the other occupants.

In respect of exh. "A5" we quote what the learned judge said:

> In addition exhibit "A5" is a letter from the Plaintiff themselves to the Pentadbir Tanah Petaling containing a undertaking by the Plaintiff to pay compensation to the Defendants in consideration of the Defendants handing over the said land to the Plaintiff for development. Further exhibit "A-5" also clearly states the status of the Defendants and refers to them clearly and unambiguously as "Peneroka" which means "settlers".

The learned judge concluded that the respondent were not squatters and it is settled law that O. 89 proceedings apply only to squatters simpliciter and this fact alone takes this case out of the provision of O. 89 proceedings.

We agreed with his conclusion.

Further, exh. "A4", a letter from the Pentadbir Tanah Petaling showed that as far back as 1994, a paper on the alienation of the said lands to the respondents was prepared and submitted to the State Director of Land and Mines for the consideration of the State Authority.

Exhibit "A6" is the result of the decision of the state authority in respect of the said lands where the settlers (including the respondents) were confirmed to be one hundred and twenty (120) as ascertained by the appellant and each of them was to be allotted an area of 8000 sq. ft at a cost of 50 cts per sq. ft and the appellant to pay some form of compensation to the settlers (including the respondents) for vacating the said lands before proceeding with the earthworks for the project.

All the above, in our view, would show that the respondents had shown that they were not squatters simpliciter otherwise the state authority would have taken action against them under s. 425(1) of the National Land Code 1965 and they could have been evicted under O. 89 of RHC for being squatters simpliciter.

The facts of the present case are more or less similar to the case of *Shaheen bte Abu Bakar v. Perbadanan Kemajuan Negeri Selangor* [1998] 1 CLJ 74 where the Federal Court in allowing the appeal held at p. 87:

> Similarly in the present case, if the initial entry of the settlers on the land was unlawful, they had committed an offence under s. 425(1) of the National Land Code. They could also be evicted under O. 89 for being squatters simpliciter. From the evidence, the State Government knew of their presence on the said land from December 1981. No action was taken to charge them under the National Land Code for illegally occupying the said land. No proceeding was taken to evict them under O. 89. From January 1988, the Menteri Besar knew about the settlers. He approved the renovation of their surau. He knew that the settlers were provided with water supply, roads and a community hall. As stated earlier, when the land was given to PKNS, it knew about the settlers. In our opinion, there is an arguable case that the settlers occupied the said land with the acquiescence of the State Authority.

This court in *Salim bin Ismail v. Lebbey Sdn Bhd (No 2)* [1997] 1 CLJ 102 at p. 107 succinctly stated:

> The summary procedure under O. 89 is governed by the same principle as those under O. 14 of the Rules of the High Court 1980. To entitle a defendant to a trial, all he needs to do is to show that there is a triable issue of law or fact. It is only in clear cases of trespass that a summary order can be made under O. 89.

In respect of the non-compliance of O. 89 r. 3(b) of RHC, the appellant merely stated that the respondents occupied the State Land without the consent of the State Authority. The documentary evidence placed before the court below showed that the appellant was involved in the discussion with the respondents and others regarding, *inter alia*, compensation to be paid and who were entitled

were narrowed down to 120 settlers (including the respondents) as ascertained by the appellant itself. In our view, there was substance on the allegation by the respondents of suppression of material facts by the appellant.

To conclude, the learned judge was correct in his finding that, on the material before him, the respondents were not squatters simpliciter and that there were triable issues. He was therefore right to rule that O. 89 was not the proper procedure when he dismissed the appellant's originating summons with costs.

In the circumstances we dismissed the appeal with costs. We affirmed the order of the learned judge. We ordered the deposit to go to the respondents towards their taxed costs.